IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

Crl.MC.No. 8517 of 2002()

(C.M.P.NO.1497/02 DT. 17.7.02 PASSED BY JFCM PEERMADE)

PETITIONER(S):

FOREST RANGE OFFICER,
VALLEKKADAN RANGE, PERIYAR EAST JUNCTION,
PERIYAR TIGER RESERVE, THEKKADI.

BY PUBLIC PROSECUTOR K.C.SANTHOSH KUMAR.

RESPONDENT(S):

1.DEEPU, S/O. VIJAYA KUMAR,
MALLIKA SADANAM VEETTIL, CHAKKUPALLAM KARA,
CHAKKUPALLAM VILLAGE, UDUMPANCHOLA.

ADDL.R2 IMPLEADED :

2. VISWAS ENTERPRISES, MOOVATTUPUZHA,
REP. BY MANAGER, M.S.MURALEEDHARAN
(IMPLEADED AS PER ORDER DT. 20.11.2002 IN CRL.M.P.7939/02)

ADV. SRI.K.VINOD CHANDRAN FOR ADDL.R2

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRL.M.C.NO. 8517 OF 2002

Dated this the 13th day of September, 2007

O R D E R

The Forest Range Officer is the petitioner. He filed a complaint against the first respondent as the first accused, alleging that he along with three co-accused committed offences under Sections, 27, 29, 31, 39 and 51 of the Wild Life (Protection) Act, 1972 and Section 27 of the Kerala Forest Act, 1961.

2. An Auto rickshaw bearing No.KL-7 AF-3681 was seized on 26.4.2002 while accused were transporting illicitly collected cinnamon bark from the wild life sanctuary at Thekkadi. The first respondent was arrested from the scene of offence and the vehicle used for the commission of offence was taken into possession. Three other persons were also involved in the offence, but they ran away while attempting to arrest them.

3. The first respondent filed C.M.P.No.1497 of 2001 before the Magistrate's Court under Section 457 of the Code for interim custody of the auto rickshaw involved in the case. The petition was allowed, as per the impugned order, and petitioner herein was directed to release the vehicle to the respondent-accused, after obtaining a

receipt. The said order is under challenge.

4. Learned Public Prosecutor vehemently contended that the impugned order, directing release of the vehicle to the first respondent is illegal. It is passed, without taking into consideration, the principles in releasing of a vehicle which is involved in a forest offence under the provisions of the Wild Life Protection Act. As per the provisions under the Act, particularly Section 39, every vehicle that has been used for committing an offence, if seized under the provisions of the Act becomes the property of the Central Government. Therefore, the question of release of the vehicle to any person, whether registered owner or not does not arise. The vehicle becomes property of the Central Government, by virtue of Section 39 which was introduced in the statute by Amendment Act 44 of 1991.

5. It is strongly contended that legislature intended that under no circumstance, a vehicle which is involved in an offence under the Wild Life Protection Act shall be released to the offender or a person who owns the vehicle. Such persons are not entitled to be in possession of the vehicle by virtue of Section 39 since the vehicle automatically becomes the property of the Central Government. The vehicle involved in the offences under the Act cannot be dealt with

in equal terms as the vehicles involved in other crimes, it is argued. Since the vehicle becomes the property of the Government by virtue of Section 39, in effect there is bar in releasing the vehicle to the owner or person who is entitled to be in possession of the vehicle by virtue of the registration certificate or otherwise. It is only in cases where a person who seeks to get the vehicle released to him can satisfy that the vehicle is not used for the commission of offence under the Act he can get the vehicle released to him.

6. Learned Public Prosecutor vehemently argued that Section 457 of the Code has no application in the case of the vehicles involved in the commission of offence under the Act, since there is no question of release of vehicle to any person other than the Government, since it becomes the property of the Government. However, learned counsel appearing for the second respondent who is stated to be financier of the vehicle argued that the Magistrate is empowered under sub-section 50(4) to deal with the vehicles seized under the provisions of the Act in accordance with law.

7. Section 50(4) provides that anything seized shall forthwith be taken before a Magistrate to be dealt with according to law. In the light of Section 50, it is clear that if a vehicle is seized under the power vested in certain officers as per Section 50(1), such vehicles

have to be produced before the Magistrate's Court forthwith and left to the Magistrate to deal with the same in accordance with law. Therefore, it cannot be said that there is a total bar in application of Section 457 of the Code in the light of Section 50(4) of the Act, it is argued.

8. It is further contended that intention of the legislature is very clear from the background in which sub-sections (c) and (d) were introduced to Section 39(1) of the Act by the Amendment Act 44 of 1991. It has come into force with effect from 2.10.1991. It has to be noted that by virtue of Section 39, the vehicle which has been used for committing the offence and has been seized under the provisions of the Act becomes the property of the Central Government and therefore while the Magistrate deals with such vehicle, care should be taken that the vehicle is retained with the Government. But if the person who seeks for release of the vehicle can satisfy the court that the vehicle has not been used for the commission of offence under the Act or seized under the provisions of the Act certainly the Magistrate can look into this fact and consider whether such vehicle becomes the property of the Government by virtue of Section 39.

9. It is only if there is prima facie proof that the vehicle which

is produced before the Magistrate under sub-section 4 of Section 50 has been used for committing offence and has been seized under the provisions of the Act that it becomes the property of the Central Government as per Section 39. Therefore, in fit cases if the Magistrate is prima facie satisfied that the vehicle is not used for commission of such offence, there may not be bar in dealing with the vehicle and release the vehicle to the person who is entitled to possess the same, since in such case the question whether the vehicle has become the property of the Government may not be satisfactorily established.

10. Learned Public Prosecutor cited a decision of the Supreme Court reported in ***State of Karnataka v. K.Krishnan*** (AIR 2000 SC 2729) and argued that the principles laid down in the said decision have to be kept in mind before a vehicle is released. Though the said decision is rendered, while dealing with the provisions of the Karnataka Forest Act, I am satisfied from the principles laid down in the said decision that those can be applied in a case falling under the Act also.

11. Learned Public Prosecutor argued that learned Magistrate has dealt with the whole issue in a very light heart manner without keeping the principles in mind and the only fact which persuaded by

the learned Magistrate to release the vehicle is “no purpose will be served in keeping the vehicle idle at the office of Vallakkadavu Forest Range”. There can be no doubt that the facts which are to be looked into before releasing of the vehicle will not include any such futility on keeping the vehicle idle etc. The court has necessarily to consider whether prima facie, it is established that the vehicle is used for the commission of offence or not.

12. Learned counsel for the second respondent argued that the second respondent is entitled to possession of the vehicle. But the court has not looked into whether the first respondent is in any way entitled to be in possession of the vehicle as an owner or otherwise. It is also submitted that there was no stay against disposal of criminal case pending before the Magistrate's Court and hence it is not known to him whether the case has been finally disposed of or not and the impugned order relates only to the interim custody.

13. On hearing both sides and on consideration of the facts and circumstances of the case, relevant provisions and the decision of the Supreme Court cited above, I am satisfied that the impugned order is passed, without looking into any of the relevant aspects which are to be considered in a case like this. So, it is necessary

that the matter is reconsidered and for that purpose, it has to be remanded.

14. Hence, the impugned order is set aside and the matter is remanded to trial court for fresh consideration and disposal, after giving notice to both sides. If the case is finally disposed of and final order is passed regarding custody of vehicle, as pointed out by second respondent's counsel, it is made clear that the matter regarding custody need not be considered again.

This petition is disposed of accordingly.

K.HEMA, JUDGE

vgs.